

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

11 Writ Petition No.3150 Of 2020

Radhika Vijaykumar Gudewar .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

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Mr. Menezes Joslyn A., Advocate for the Petitioner

Mr. S.G. Sangle, AGP for Respondent Nos.1 and 2

Mr. Y.B. Bolkar, Advocate h/f. Mrs. P.V. Diggikar, Advocate for Respondent Nos.3 and 4

Mr. S.S. Bora, Advocate for Respondent No.5

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**(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)**

DATE : NOVEMBER 22, 2021

PER COURT :

1. On 21-10-2021, we had passed the following order :-

“1. There is no dispute that the petitioner has been declared surplus w.e.f. 06.02.2019. It is equally undisputed that surplus teachers receive full salary without working the moment they are declared as surplus.

2. The grievance of the petitioner is that though she has been declared surplus on 06.02.2019, respondent Nos.1 to 4/ State and respondent No.5/Municipal Corporation are duty bound to pay the salary until the petitioner is absorbed.

3. Respondent No.2/Deputy Director of Education, Aurangabad has directed respondent No.5/ Municipal Corporation vide communication dated 07.02.2019 that the proposal of the petitioner be forwarded for absorption.

4. Shri Bora, the learned advocate for respondent Nos.5

and 6, submits that salaries to be paid to the surplus teachers are split into two parts. One part is to be paid by the Municipal Corporation and one part is paid through the salary grants by the State.

5. In view of the above, we direct respondent Nos.5 and 6 to forward the proposal of the petitioner for absorption and for payment of unpaid salaries w.e.f. 06.02.2019 till October, 2021, to respondent No.2, on or before 30.10.2021. So also, respondent No.5/ Municipal Corporation shall pay 50% of the salary w.e.f. 06.02.2019 till October, 2021, directly to the petitioner, on or before 17.11.2021. Respondent No.2, in coordination with respondent No.3, would ensure that 50% salary to be paid by the Government, would be deposited in the salary bank account of the petitioner, on or before 17.11.2021.

6. List this petition on 22.11.2021 in the urgent admissions category.

7. In the meanwhile, respondent No.5 shall assess whether, the salary for January, 2019 has been paid to the petitioner or not.”

2. The learned AGP has filed a short affidavit through Mr. Anil Sampatrao Sabale, Deputy Director of Education, Aurangabad, dated 18-11-2021. The learned AGP points out that the directions issued by this Court have been complied with and an amount of Rs.7,39,255/- has been deposited by the State in the account of the petitioner and an amount of Rs.7,50,465/- has been deposited by the Parbhani City Municipal Corporation as its share, in the account of the petitioner.

3. The learned Advocate for the petitioner, on instructions, confirms the deposit of the said amount.

4. The learned AGP submits that emergent steps are being initiated for absorption of the petitioner.

5. The learned Advocate for the Corporation submits that until the petitioner is absorbed, she has to be paid portions of her salary despite discharging no duties. This is an unnecessary burden on the State exchequer as the law mandates such payment of salary until the surplus teacher is absorbed. He, therefore, submits that it would be appropriate for this Court to direct urgent steps to be taken for her absorption.

6. Considering the affidavit filed by the Deputy Director of Education indicating that steps for absorbing the petitioner according to the availability of any position in a particular area, district have been initiated and in the event of non-availability of position in a particular area / district, then the steps for absorbing the petitioner in the region / State, would be initiated.

7. In view of the above, this petition is disposed off. Respondent No.2 - Education Department shall ensure that the petitioner is absorbed wherever a suitable position is noticed, as expeditiously as

possible and preferably on or before 31-12-2021. Needless to state, considering the nearest place and if not, anywhere in the State, if the petitioner is absorbed, she shall not refuse to perform duties.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)